

Remarks/Arguments:

Claims 1 through 58 are subject to a restriction requirement under 35 U.S.C. § 121. The Official Action identifies a restriction to three groups of claims. Applicants hereby elect Group I, Claims 1 through 28, with traverse, for continued prosecution. As such, please cancel Claims 29 through 58, without prejudice.

Every requirement to restrict has two aspects, (1) the reasons (as distinguished from the mere statement of conclusion) why the inventions *as claimed* are either independent or distinct, and (2) the reasons for insisting upon restriction therebetween. MPEP § 808. [Emphasis in the original]. With regard to the first aspect, the action fails to provide a reason as to why the inventions identified in the Official Action are distinct.

With regard to the second aspect, the reasons under MPEP § 808 given by the Examiner for insisting upon exercising his authority under 35 U.S.C. § 121 to require restriction must be reasons approved by the Commissioner. The reasons approved by the Commissioner are set out in MPEP § 803: (1) the inventions must be independent (see MPEP § 802.01, § 806.04, § 808.01) or distinct as claimed (see MPEP § 806.05 - § 806.05(i); and (2) there must be a serious burden on the examiner if restriction is not required (see MPEP § 803.02, § 806.04(a)-(j), § 808.01(a) and 808.02). Examiner must provide reasons and/or examples to support conclusions. MPEP § 803.

For purposes of the initial requirement, a serious burden on the examiner may be shown, *prima facie*, if the examiner shows by appropriate explanation either separate classification, separate status in the art, or a different field of search as defined in MPEP § 808.02. That *prima facie* showing may be rebutted by appropriate showings or evidence by the applicant. MPEP § 803. Applicants respectfully assert that the Examiner has failed to make a *prima facie* case that restriction is required.

Applicants' traversal is argued on the grounds that a thorough search of the subject matter of Groups I, II and III would necessarily include art in class 436 or Chemistry: Analytical and Immunological Testing. Moreover, a search on the subject

Application No.: 09/561,102

Attorney Docket No. 119929-1031

Amendment Dated: April 30, 2004

Reply to Office Action dated March 22, 2004

matter of Groups I and II would necessarily include class 436, subclass 56 or Tracers and Tags. As such, Applicants submit that the examination of Groups I, II and III on the merits would impose no additional burden on the Patent Office. Applicants, therefore, respectfully assert that the *prima facie* requirements of MPEP § 803 have not been met.

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Conclusion:

Applicants provisionally elect Group I, Claims 1-28 for continued prosecution. For the reasons set forth above, Applicants respectfully request reconsideration by the Examiner and withdrawal of the restriction/election requirement. Applicants submit that Claims 1-28, are allowable as currently pending. Favorable consideration and allowance of the Application is therefore respectfully requested. If the Examiner has any questions or comments, or if further clarification is required, it is requested that the Examiner contact the undersigned at the telephone number listed below.

Please also note the following change in correspondence information and send all future correspondence to the following address:

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Dated: April 30, 2004

Respectfully submitted,
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